



4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-IA-2011-0093]

[96300-1671-0000-P5]

RIN 1018-AX96

Endangered and Threatened Wildlife and Plants; Publishing Notice of Receipt of Captive-Bred Wildlife Registration Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to amend the regulations that implement the Endangered Species Act (Act) by establishing public notice and

comment procedures for applications to conduct certain otherwise prohibited activities under the Act that are authorized under the Captive Bred Wildlife (CBW) regulations. This action would add procedural requirements to the processing of applications for registration under the CBW regulations. Notices of receipt of each application would be published in the **Federal Register**, and the Service would accept public comment on each application for 30 days. If the registration were granted, the Service would publish certain findings in the **Federal Register**. In addition, for persons meeting the criteria for registering under the CBW Program, each registration could remain effective for 5 years.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Enter Keyword or ID box, enter FWS–R9–IA–2011–0093, which is the docket number for this rulemaking. You may submit a comment by clicking on “Send a Comment”.

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–IA–2011–0093; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section at the end of SUPPLEMENTARY INFORMATION for further information about submitting comments).

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703-358-2104; fax 703-358-2281. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and its implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities unless authorized by a permit. These activities include take, import, export, and interstate or foreign commerce of fish or wildlife species listed as threatened or endangered under the Act. In the case of endangered species, the Service may permit otherwise prohibited activities for scientific research or enhancement of the propagation or survival of the species. In the case of threatened species, regulations allow permits to be issued for the above-mentioned purposes, as well as zoological, horticultural, or botanical exhibition; education; and special purposes consistent with the Act.

In 1979, the Service published the Captive-Bred Wildlife (CBW) regulations at 50 CFR 17.21(g) (44 FR 54002, September 17, 1979) to reduce Federal permitting requirements and facilitate captive breeding of endangered and threatened species under certain prescribed conditions. Specifically, under these regulations, the Service promulgated a general permit to authorize persons to take; export or reimport; deliver, receive, carry, transport, or ship in

interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce endangered or threatened wildlife bred in captivity in the United States. Qualifying persons and facilities seeking such authorization under the regulations are required to register with the Service. By establishing a more flexible management scheme to regulate routine activities related to captive propagation, these regulations have benefited wild populations by, for example, increasing sources of genetic stock that can be used to bolster or reestablish wild populations, decreasing the need to take stock from the wild, and providing for research opportunities.

The authorization granted under the CBW regulations is limited by several conditions. These conditions include:

- (1) The wildlife is of a species having a natural geographic distribution not including any part of the United States or the wildlife is of a species that the Director has determined to be eligible in accordance with 50 CFR 17.21(g)(5);
- (2) The purpose of authorized activities is to enhance the propagation or survival of the affected species;
- (3) Activities do not involve interstate or foreign commerce, in the course of commercial activity, with respect to nonliving wildlife;
- (4) That each specimen of wildlife to be reimported is uniquely identified by a band, tattoo, or other means that was reported in writing to an official of the Service at a port of export prior to the export from the United States; and
- (5) Any person subject to the jurisdiction of the United States who engages in any of the authorized activities does so in accordance with 50 CFR 17.21(g) and with all other applicable regulations.

The regulations also specify application requirements for registration that are designed to provide the Service with information needed to determine whether the applicant has the means of enhancing the propagation or survival of the affected species. For example, the application must include a description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered under the registration and documentation depicting the facilities in which the subject wildlife will be maintained.

Under this proposed rule, the Service would amend the CBW regulations to provide the public with notice of receipt of applications for CBW registration and an opportunity to comment on an applicant's eligibility to register under the regulations. If we determine that the registration should be granted, we will notify the public by publishing our findings in the **Federal Register** that each registration was applied for in good faith, will not operate to the disadvantage of the affected species, and is consistent with the purposes and policy set forth in section 2 of the Act. These procedures will apply to both original and renewal applications for registration, as well as applications for amendment of the registration. In addition, we will make information received as part of each application available to the public upon request, including, but not limited to, information needed to assess the eligibility of the applicant such as the original application materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

By incorporating these procedural amendments to the CBW regulations, the Service intends to increase transparency and openness in the CBW registration process, consistent with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the Presidential Memorandum of January 21, 2009, which encourage government agencies to establish a system of transparency, public participation, and collaboration by disclosing

information to the public. In addition, with these amendments, we believe that increased public participation in the CBW registration process will lead to better decisions by assisting the Service in assessing whether the applicants are capable of enhancing the propagation or survival of the species. By incorporating these procedures to increase transparency and openness in the registration process, interested persons' perceptions of the fairness of the registration process will improve, as well as their acceptance of our ultimate determination as to whether the registration should be granted.

Effects of the Proposed Rule

One of the factors that led to the Service establishing the CBW program was the desire to avoid permitting delays that might hinder the propagation of endangered and threatened species for conservation purposes. The Service receives an annual average of 26 applications to establish new CBW registrations and 80 applications to renew already approved CBW registrations. Because the ESA prohibitions remain in place during the initial application process, new applicants are unable to carry out activities under a CBW registration until it is issued. While the publication of the receipt of an application under the CBW program would increase the processing time for the application by approximately 35 or 40 days, we do not believe that this increase in processing time would adversely affect the potential CBW registrant's conservation work. In addition, in the event of an emergency situation where the health or life of a protected species is threatened and no reasonable alternative is available to the applicant, the Service shall waive this 30-day public comment period.

Regulations are already in place (50 CFR 13.22(c)) that allow for the continuation of authorized activities if a CBW registrant submits a renewal application at least 30 days before

the expiration of the current CBW authorization and the registration is in good standing (i.e., annual reports have been submitted and the registration is not suspended). Provided that the current CBW holders submit their renewal request at least 30 days before the expiration date, the comment period would have no impact on their ability to carry out previously approved activities. The current registration would continue to be valid until the renewal process, including the 30-day comment period, ends and we make a final determination.

The Service will also extend the registration period associated with approved CBW registrations up to 5 years, provided that the registrant remains in good standing. This increase in the registration period from 3 years to 5 years will both reduce the application renewal burden on CBW registrants and reduce the workload on the Service to process renewal requests. Furthermore, the annual reporting requirement will remain in place, and because the Service uses these reports to monitor CBW registrants, the Service does not believe that extending the registration period would adversely affect the oversight of the CBW program.

Required Determinations

Regulatory Planning and Review—Executive Order 12866: The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria.

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act: Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 et seq.). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities”. See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) defines a small business as one with annual revenue or employment that meets or is below an established size standard. We expect that the majority of the entities involved in activities authorized under the CBW program would be considered small as defined by the SBA.

This rule would require the Service to publish notices in the **Federal Register** announcing the receipt of all CBW applications and provide the public with a 30-day comment period to provide the Service with any relevant information about the applicant or their

operation. In addition, the rule would require the Service to publish a notice in the **Federal Register** of specified findings for approved registrations. The regulatory change is not major in scope and would create no financial or paperwork burden on the affected members of the general public. In fact, the extension of the effective period of a CBW registration from 3 to 5 years will result in a reduction of the paperwork burden on the public because of the reduced frequency of completing a renewal application.

We, therefore, certify that this proposed rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act: This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of \$100 million or more. This rule would codify a public notice-and-comment process for the receipt of CBW applications and require the publication of certain findings for registrations granted under the CBW regulations. The Service would publish no more than two notices in the **Federal Register**, and would require nothing from the applicant as far as additional cost or paperwork. This rule would not have a negative effect on this part of the economy. It will affect all businesses, whether large or small, the same. There is not a disproportionate share of benefits for small or large businesses.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, tribal, or local government agencies; or geographic regions. This rule would not result in an increase in the number of applications for registration to conduct otherwise-prohibited activities with endangered and threatened species.

c. Would not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act: Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.):

a. This rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

b. This rule would not produce a Federal requirement of \$100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings: Under Executive Order 12630, this rule would not have significant takings implications. A takings implication assessment is not required. This rule is not considered to have takings implications because it allows individuals to register under the CBW Registration program when issuance criteria are met.

Federalism: This revision to part 17 does not contain significant Federalism implications. A Federalism Assessment under Executive Order 13132 is not required.

Civil Justice Reform: Under Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of subsections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act: The Office of Management and Budget approved the information collection in part 17 and assigned OMB Control Number 1018–0093, which expires February 28, 2014. This rule does not contain any new information collections or recordkeeping requirements for which OMB approval is required under the Paperwork Reduction Act of 1995

(44 U.S.C. 3501 et seq.). We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA): The Service has determined that this action is a regulatory change that is administrative and procedural in nature. As such, the amendment is categorically excluded from further NEPA review as provided by 43 CFR 46.210(i), of the Department of the Interior Implementation of the National Environmental Policy Act of 1969; final rule (73 FR 61292; October 15, 2008). No further documentation will be made.

Government-to-Government Relationship with Tribes: Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951; May 4, 1994) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects.

Energy Supply, Distribution, or Use: Executive Order 13211 pertains to regulations that significantly affect energy supply, distribution, and use. This rule would not significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Clarity of this Regulation: We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.21 by revising paragraph (g)(3) to read as follows:

§ 17.21 Prohibitions.

* * * * *

(g) * * *

(3) Upon receipt of a complete application for registration, or the renewal or amendment of an existing registration, under this section, the Service will publish notice of the application in the **Federal Register**. Each notice will invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. All information received as part of each application will be made available to the public, upon request, as a matter of public record at every stage of the proceeding, including, but not limited to, information needed to assess the eligibility of the applicant such as the original

application, materials, any intervening renewal applications documenting a change in location or personnel, and the most recent annual report.

(i) At the completion of this comment period, the Director will decide whether to approve the registration. In making this decision, the Director will consider, in addition to the general criteria in §13.21(b) of this subchapter, whether the expertise, facilities, or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Public education activities may not be the sole basis to justify issuance of a registration or to otherwise establish eligibility for the exception granted in paragraph (g)(1) of this section.

(ii) If the Director approves the registration, the Service will publish notice of the decision in the **Federal Register** that the registration was applied for in good faith, that issuing the registration will not operate to the disadvantage of the species for which registration was sought, and that issuing the registration will be consistent with the purposes and policy set forth in section 2 of the Act.

(iii) Each person so registered must maintain accurate written records of activities conducted under the registration, and allow reasonable access to Service agents for inspection purposes as set forth in §§ 13.46 and 13.47 of this chapter. Each person so registered must also submit to the Director an individual written annual report of activities, including all births, deaths, and transfers of any type.

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__February 10, 2012__

Date

Rachel Jacobsen

Assistant Secretary for Fish and Wildlife and Parks

**~~Endangered and Threatened Wildlife and Plants; Notice of Receipt of Captive-Bred
Wildlife Registration Requests~~**

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